IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 915 OF 2005
IN
APPEAL FROM ORDER NO. 427 OF 2005

Bhupendra P.Popat. ... Applicant.
Versus.
Vinod V.Thakkar and others. ... Respondents.

Shri Rajiv Narula, Advocate i/by M/s.Jhangiani Narula & Associates for the Applicant.

Shri P.K.Dhakephalkar for the Respondents.

CORAM : ABHAY S. OKA, J.

DATED : 9th Sept., 2005.

P.C.:

1. Heard the learned Counsel for the Applicant and the learned Counsel appearing for the Respondent No.1. Affidavit of service of Respondent No.2 is filed. The contention raised in this Application is that the meeting which was held on the basis of the consent order passed in the Appeal from Order on 5th May 2005 did not transact the entire business as per the agenda which is annexed to the Minutes of Order filed in the Appeal from Order. Reliance is placed on the Commissioner's report. The Commissioner was appointed in terms of the order passed by this Court. The prayer in this Application is for a direction to hold a meeting for transacting rest of the items on Agenda which is annexed to the Minutes of Order.

2. The learned Counsel for the Respondent No.1 submitted that a Resolution was passed in the meeting which was presided over by the Court Commissioner that only agenda item Nos.9 to 21 shall be taken up on that day and rest of the agenda need not be taken up. He contended by inviting my attention to the affidavit-in-reply that it was agreed that except for item Nos.9 and 21 other items will not be discussed. Reliance was placed on video cassette and audio recording of the proceedings of the meeting. In view of the said Affidavit the Commissioner was directed to submit a further report by passing the order dated 30th August 2005.

3. Accordingly report of the Commissioner is already filed. In the said report he has given the English translation of the Resolution which was passed in the meeting. Relevant part of the report of the Commissioner reads thus:

> . Thereafter Shri M.K.Ghelani started addressing the meeting, after formal speech he addressed to the meeting that with the help of some elderly persons of the community we i.e. myself, Mr.Yogesh Lakhani and Shri Dinesh Jobanputra have come to the conclusion about Agenda No.9 and 22 pertaining to the elections

of President and Trustees to be taken up first in the interest of the community and for which now I am going to read the resolution which is as under:- (The Resolution was read out in Gujarati Language, the true Translation of the same is as under):-

TRUE TRANSLATION

"Giving due respect to the order of the Hon'ble Court and present circumstances, it is unanimously resolved by this meeting of the Madhyastha Mahasamit held today that in the meeting of today the appointments of President be done by the process of earlier as per old clause 15 of the Constitution and not to do the same by the amended clause 15 in which the process of selection is prescribed. This amendment is restricted only to the proceedings of the meeting of today."

In continuation of the above resolution, it is further resolved that after conclusion of business upto item No.4 of the agenda, immediately hereafter proceedings of items 9 and 22 of the agenda be taken up.

Proposed by: Shri Mahendrabhai Ghelani.

Seconded by: Shri Yogeshbhai Lakhani

Shri Dineshbhai Jobanputra.

The above resolution was unanimously passed

by all the members present in the meeting."

The Commissioner has further stated thus:

"In view of the Court's order, I most respectfully submit that the report called by the Hon'ble Court is submitted herewith by transcribing the same from video cassette No.1, as above whereby statement made in the Affidavit filed on behalf of the Respondent is incorrect because at that time meeting was continued thereafter in view of the resolution passed unanimously as stated above and in the said resolution nothing was declared therein about rest of the Agenda and in the meantime while continuing the meeting with Agenda No.9 and 22 it took about 11.45 p.m. and I already described in minutes of the said meeting held on 31.7.05 about the reasons for not completing the meeting as ordered by the Hon'ble Court."

4. Thus from the report of the Commissioner it

appears that no such resolution as contended by the Respondent No.1 has been passed. It is pertinent to note that in the affidavit-in-reply filed by Shri Nensibhai Mirani claiming to be the Trustee and Secretary of Shree Lohana Mahaparishad, it is stated thus:

> "I say and submit that the true and correct picture as depicted in the VCD and the audio cassette is that the members present, decided unanimously to take up the agenda item Nos.9 and 21 only on that day and the rest of the agenda was not to be taken up. Therefore, there is no question of holding any fresh meeting now. I say and submit that as per the Court's order, the entire agenda was kept before the meeting of the Madhyasta Maha Samiti and the Madhyasta Maha Samiti decided to take up only two items being item Nos.9 and 21 and unanimously decided not to discuss any further items on the agenda and no resolution was passed that the rest of the items of the agenda will be taken up on any further adjourned meeting."

5. A perusal of the Minutes of the Order in terms of which the appeal was disposed of shows that the meeting will be held on 19th June 2005 at Ahmedabad to

consider and decide the agenda set out at Exh.A annexed to the minutes of order. The said agenda sets out total 22 items. The order of this Court was very clear that the meeting will be held to consider and decide the subjects on the agenda which was annexed to the Minutes of the Order. In view of the reports of the Commissioner, I am satisfied that save and except item No.1 to 4 and 9 and 21, other items in the agenda of the meeting have not been considered as per the order passed in the Appeal from Order. The Commissioner has recorded in his report that only item Nos.1 to 4 and 9 and 22 out of the agenda were taken up. The Appeal was disposed of in terms of Consent Minutes of Order. The clause No.1 of Consent Minutes of Order records that the meeting of existing Madhyastha Mahasamiti shall be held on 19th June 2005 at Ahmedabad to consider and decide the agenda set out at Exhibit "A". Thus a meeting must be held for transacting remaining business as mentioned in the Agenda annexed to the minutes of order. In my view further direction needs to be issued for the purpose of implementation of the order dated 5th May 2005 passed in the Appeal from order. The Commissioner who was appointed earlier is not willing to act. Therefore, some other Officer will have to be appointed as the Commissioner.

6. Hence the following order is passed:

(i) The Registrar General of this Court will appoint a competent officer of this Court preferably having knowledge of Gujarati language to hold a meeting at Ahmedabad in continuation of the earlier meeting held on 3rd July 2005 for transacting the remaining business of the meeting as per the agenda which is annexed to the Minutes of the Order filed in the Appeal from Order. Shri P.Y.Mandavkar who assisted the earlier Commissioner will assist the said Commissioner.

(ii) The Commissioner will fix a suitable date for holding the meeting at Ahmedabad preferably at the same place where the earlier meeting was held and he will issue notice to the concerned members in accordance with law. Necessary assistance will be given to the Court Commissioner and the assistant appointed by him as directed by this Court in order dated 5th May 2005.

(iii) The remuneration of the Court Commissioner is fixed at Rs.10,000/-

and the remuneration of the Assistant is fixed at Rs.5,000/-. The arrangements for travel upto Ahmedabad and stay at Ahmedabad of the said Officers will be made as directed by the order dated 5th May 2005.

(iv) It is made clear that the meeting will be held only for the purpose of the transacting the remaining business in the agenda as mentioned in Exh.A annexed to the minutes of the order.

(v) It is obvious that the decisions which are taken in the meeting which will be held in terms of this Order will bind all concerned.

(vi) Civil Application is disposed of in the above terms.

(vii) Parties to act on an authenticated copy of this order.

Judge.